

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

PRISCILLA STERLING, RAINE BECKER,
SHAWN MILLER, AND JOHN BENNETT,
INDIVIDUALLY AND ON BEHALF OF ALL
OTHERS SIMILARLY SITUATED,

Plaintiffs,

vs.

THE CITY OF JACKSON, MISSISSIPPI;
CHOKWE A. LUMUMBA; TONY YARBER;
KISHIA POWELL; ROBERT MILLER; JERRIOT
SMASH; SIEMENS INDUSTRY, INC.; AND
TRILOGY ENGINEERING SERVICES LLC.,

Defendants.

Civil No. 3:22-cv-531-KHJ-MTP

**PLAINTIFFS' RESPONSE IN
OPPOSITION TO JERRIOT
SMASH'S MOTION FOR
JUDGMENT ON THE PLEADINGS
AND/OR QUALIFIED IMMUNITY**

Plaintiffs Priscilla Sterling, Raine Becker, Shawn Miller, and John Bennett, individually and on behalf of all other similarly situated, (“Plaintiffs”) bring claims against the City Defendants (The City of Jackson, Mississippi; Chokwe A. Lumumba; Tony Yarber; Kishia Powell; Robert Miller; Jerriot Smash) for violations of Plaintiffs’ rights to bodily integrity and to be free from state created dangers protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution (Counts I and II) as well as negligence claims (Count V).

The parties agreed on a briefing schedule (dkt. 56) for the City Defendants’ motions for judgment on the pleadings (and now also for qualified immunity) which was granted by text only order.

This response concerns the motion of Jerriot Smash entitled Motion Judgement on the Pleadings and for Qualified Immunity (dkt. 72).

Plaintiffs, by and through their undersigned counsel and pursuant to L.U. Civ. R. 7 and Fed. R. Civ. P. 12(b)(6), hereby submit this Response in Opposition to that and a Memorandum in Support of its position.¹ As outlined in that Memorandum, the motion ignores binding Supreme Court and Fifth Circuit precedent and does not address relevant factual allegations in Plaintiffs’ Complaint. Plaintiffs hereby incorporate the accompanying Memorandum of Opposition to the Motion into this response.

¹ Defendants filed similar motions with duplicative arguments, many of which have entire sections that are the same word for word. Rather than ask the Court to review duplicative responsive memorandums, Plaintiffs have consolidated all of their analysis into one unique memorandum.

WHEREFORE, Plaintiffs respectfully request that this Court deny Defendant's motion. Should this Court grant the motion, Plaintiffs request leave to amend their pleading to cure any defects.

Dated: August 16, 2023

Respectfully submitted,

/s Mark P. Chalos

Mark P. Chalos (Admitted *Pro Hac Vice*)

Kenneth S. Byrd (Application for Admission *Pro Hac Vice*
Forthcoming)

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CERTIFICATE OF SERVICE

I, Amelia A. Haselkorn, declare as follows:

I am employed in the law firm of Lief Cabraser Heimann & Bernstein, LLP, whose address is 275 Battery Street, 29th Floor, San Francisco, California 94111-3339. I am readily familiar with the business practices of this office. At the time of transmission, I was at least eighteen years of age and not a party to this action.

On August 16, 2023 I directed that the foregoing document be filed via the U.S. District Court's CM/ECF electronic system and a copy thereof was served upon all counsel of record:

**PLAINTIFFS' RESPONSE IN OPPOSITION TO JERRIOT SMASH'S MOTION
FOR JUDGMENT ON THE PLEADINGS AND/OR QUALIFIED IMMUNITY**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration was executed on August 16, 2023.

s/ Amelia A. Haselkorn
Amelia A. Haselkorn